

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appl. No. : 10/579,786  
Conf. No. : 3971  
Applicant : Keith Medley  
Int'l Filing Date : 02/19/2003  
TC/A.U. :  
Examiner :  
Docket No. : P08427-T

### **PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b)**

The above-identified application became abandoned for failure to file a timely and proper reply to a notice or action by the United States Patent and Trademark Office. The date of abandonment is the day after the expiration date of the period set for reply in the office notice or action plus any extensions of time actually obtained.

#### APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION

NOTE: A grantable petition requires the following items:

1. Petition fee;
2. Reply and/or issue fee;
3. Terminal disclaimer with disclaimer fee – required for all utility and plant applications filed before June 8, 1995; and for all design applications; and
4. Statement that the entire delay was unintentional

#### **1. Petition Fee**

Small entity fee = \$810.00

#### **2. Reply and/or issue fee**

The Office requested a Declaration, which is submitted herewith. Applicant also submits herewith a declaration signed by John Schneider stating that he is not an inventor in the present application and that any error in inventorship occurred without any deceptive intent. Applicant submits that all the requirements of 37 CFR 1.497(d) have been met.

#### **3. Terminal disclaimer**

Since this utility application was filed after June 8, 1995, no terminal disclaimer is required.

#### **4. Statement**

The entire delay in filing the required reply from the due date of the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional.

Applicant's current counsel did not become counsel of record in the child case until December 10, 2008. Applicant did not become counsel of record for the current case at that time.

At that time, there was no indication in the record of the child case that there was any issue with respect to the priority claim in the child case. There were two Office Actions in the child case, mailed March 24, 2010 and June 15, 2010. In neither Office Action did the Examiner point out any issues with respect to the priority claim. It was only on the third Office Action, mailed July 12, 2010, did the Examiner make an issue of the priority claim. Therefore, even the USPTO was not aware of this issue until July 2010.

This delay occurred despite the exercise of due care or diligence on the part of the applicant. Applicant's current counsel had no reason to ever inquire as to the status of the present application, because Applicant's current counsel was concentrating on the prosecution of the child case. There was no indication anywhere in the file history of the child case that there was any issue with concerning the status of the current case—e.g., the filing receipt of the child case listed the priority claim without comment and the USPTO issued two Office Actions without commenting on the priority claim.

After Applicant's current counsel became aware of the abandonment of the present application, current counsel began to diligently procure the necessary signatures to correct the inventorship issues, finally obtaining Jon Schneider's signature, a signature that the Applicant had previously been unsuccessful in obtaining. Applicant thus asserts that it has satisfies the requirements to get this patent application revived.

## CONCLUSION

Applicant respectfully submits that it has satisfied all the requirements to revive the present application and respectfully requests such a revival.

Respectfully submitted,

Date: January 12, 2011

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